U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a Christian missions agency. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as the petitioner's international missions director. The director determined that the petitioner had not established that it qualifies as a tax-exempt religious organization, or that the beneficiary had the requisite two years of continuous work experience as an international missions manager immediately preceding the filing date of the petition.

On appeal, the petitioner submits copies of previously submitted documents, and a new breakdown of the beneficiary's previous tasks.

Section 203(b)(4) of the Act provides classification to qualified special immigrant religious workers as described in section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C), which pertains to an immigrant who:

> (i) for at least 2 years immediately preceding the time of application for admission, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the United States;
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> (ii) seeks to enter the United States--
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> > (I) solely for the purpose of carrying on the vocation of a minister of that religious denomination,
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> > (II) before October 1, 2008, in order to work for the organization at the request of the organization in a professional capacity in a religious vocation or occupation, or
> >
> > (III) before October 1, 2008, in order to work for the organization (or for a bona fide organization which is affiliated with the religious denomination and is exempt from taxation as an organization described in section 501(c)(3) of the Internal Code of 1986) at the request of the organization in a religious vocation or occupation; and
>
> (iii) has been carrying on such vocation, professional work, or other work continuously for at least the 2-year period described in clause (i).

The first issue in contention regards the petitioner's tax-exempt status. 8 C.F.R. § 204.5(m)(3)(i) requires the petitioner to submit evidence that the organization qualifies as a non-profit organization in the form of either:

> (A) Documentation showing that it is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations (in appropriate cases, evidence of the organization's assets and methods of operation and the organization's papers of incorporation under applicable state law may be requested); or
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> (B) Such documentation as is required by the Internal Revenue Service to establish eligibility for exemption under section 501(c)(3) of the Internal Revenue Code of 1986 as it relates to religious organizations.

Dr. Maurice J. Hart, president of Anchor Bay Evangelistic Association, states that the petitioner falls under the association's group exemption. The petitioner has submitted what appears to be a transcription of the association's group exemption letter from the Internal Revenue Service (IRS), dated July 28, 1977. The petitioner has not submitted a copy of the actual IRS letter. The transcribed letter does not indicate the particular classification assigned to the association.

On February 27, 2003, the director instructed the petitioner to submit additional evidence to clarify the nature of its tax-exempt status. In response, the petitioner has submitted a copy of an IRS advance ruling letter from February 19, 2003.[1] The letter indicates that the petitioner "formally separated from Anchor Bay Evangelistic Association" on February 13, 2003. The letter states, in pertinent part: "Because you are a newly created organization, we are not now making a final determination of your foundation status under section 509(a) of the Code. However, we have determined that you can reasonably expect to be a publicly supported organization described in sections 509(a)(1) and 170(b)(1)(A)(vi)." The letter indicates that the "Advance Ruling Period Begins: February 13, 2003."

8 C.F.R. § 103.2(b)(12) indicates that a petitioner's response to a request for information must show that the petition was amenable to approval at the time of filing, in this instance October 2002. The IRS letter, however, does not show that the petitioner was individually recognized as tax-exempt until February 2003. The petitioner's original 1998 articles of incorporation do not contain a clause regarding the disposition of assets in the event of dissolution; without such a qualifying dissolution clause, a corporation cannot qualify for tax-exempt status. An amendment to the articles of incorporation, adding the required dissolution clause, was filed with the state of Kansas on January 22, 2003. This documentation further demonstrates that, as of the October 2002 filing date, the petitioner's articles of incorporation did not meet the requirements for a tax-exempt non-profit organization.

The petitioner did not qualify for its own tax exemption in October 2002, and the evidence presented is insufficient to show that the petitioner was covered by another organization's group exemption at that time. Therefore, we concur with the director's finding that the beneficiary has not met its burden of proof regarding its tax-exempt status.

The second issue in the director's decision concerns the beneficiary's past work. The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on October 19, 2002. Therefore, the petitioner must establish that the beneficiary was continuously performing the duties of an international missions coordinator throughout the two years immediately prior to that date. The beneficiary entered the United States on June 11, 2002, and spent much of the two-year period outside the United States.

In a letter dated October 9, 2002, four months after the beneficiary arrived in the United States, [redacted] president of the petitioning entity, states that the beneficiary "will coordinate our overseas crusades and conferences from the headquarters here in America. He will oversee the operations of our

[1] The letter bears the rubber-stamped date "Feb 19 2002," but this date is clearly in error, as the letter refers to events that did not take place until February 2003.

national representatives." He does not indicate that the beneficiary has, as of the date of the letter, already begun working as the petitioner's international missions director.

A letter from [redacted] senior pastor of Koinonia Home Church, Makassar, Indonesia, indicates that the beneficiary "served as one of our associate pastors from 1998-2002 with authority to conduct church services." A certificate from Youth With A Mission, Denver, Colorado, indicates that the beneficiary "completed five months of training in Christian character development" at the Discipleship Training School in 2001.

The director instructed the petitioner to submit detailed information regarding the beneficiary's duties throughout the two-year qualifying period. In response, [redacted] states that the beneficiary "worked with our affiliate church (Koinonia Home Church) in Indonesia as a full time minister for 4 years (1998-2002). Since his arrival in the United States, he has continued to work as a full time minister with our organization on [a] voluntary basis." [redacted] asserts that, in addition to the duties described previously, the beneficiary "has an authorization to conduct religious worship and to perform other duties usually [performed] by authorized members of clergy," including preaching sermons and conducting sacraments.

The director denied the petition, stating that the petitioner had not submitted sufficient evidence to show that the beneficiary has continuously performed the same duties throughout the two-year qualifying period. On appeal, [redacted] submits a statement, signed by himself and by the beneficiary, containing "the details of beneficiary's work of ministry here for the last 10 years." The statement indicates that, during the two-year qualifying period, the beneficiary conducted church services, traveled to various churches, and completed training at the Discipleship Training School. Regarding this training, it is not obvious that the beneficiary, during these five months in Denver, was in a position to act as an associate pastor in Indonesia, or as an international missions director for an organization in Kansas. An alien who works only part-time as a minister, while pursuing full-time studies, is not continuously carrying on the vocation of a minister. *Matter of Varughese*, 17 I&N Dec. 399 (BIA 1980).

The petitioner asserts that the beneficiary acted as a minister throughout the two-year qualifying period. Leaving aside the five months of study in Denver, it remains that the petitioner originally stated that it seeks to employ the beneficiary not as a minister, performing sacraments and leading congregations in worship. Rather, the petitioner initially sought to employ the beneficiary as its international missions director, to "coordinate our overseas crusades and conferences" and "oversee the operations of our national representatives." The petitioner's subsequent declaration that the beneficiary will also work as a minister appears to be an after-the-fact modification of the job offer, intended to bring the circumstances of the petition more in line with the regulations and requirements. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998).

Furthermore, we note that the IRS tentatively classified the petitioner under section 170(b)(1)(A)(vi) of the Code. While this was only a provisional classification, the petitioner has not shown that the IRS later changed the classification. Therefore, the evidence presented to the IRS did not persuade that agency that the petitioner qualifies as a "church." The record contains no evidence that the beneficiary's regular duties have and will continue to consist mainly of the usual duties of a minister. If the petitioner is not a church, with its own congregation, then it is not clear how the beneficiary could act as a minister on the petitioner's behalf.

We note that simply calling an alien a minister, and producing a certificate of ordination, is not sufficient to qualify the alien for immigration benefits as a minister. *See Matter of Rhee*, 16 I&N Dec. 607 (BIA 1978).

Based upon the above, we conclude that the beneficiary, during the two years immediately prior to the filing date, was not performing the duties outlined in the petitioner's job offer. Therefore, the petitioner has not met this requirement.

Review of the record reveals another issue of concern. The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

In the initial submission, [redacted] stated that the beneficiary would receive housing, transportation, and $1,000 per month. The initial submission contained no financial documents. The director subsequently informed the petitioner that it "must submit evidence that the religious organization has the financial capability to pay the beneficiary's wage." In response, [redacted] has stated that the petitioner "is competent to support [the beneficiary] financially," and he submitted a copy of a bank statement, showing that the petitioner had a bank balance of $4,539.18 as of May 16, 2003. The balance nine days earlier was $1,176.87, before the petitioner deposited two checks into the account.

The above-cited regulation at 8 C.F.R. § 204.5(g)(2) states that evidence of ability to pay "shall be" in the form of tax returns, *audited* financial statements, or annual reports. The petitioner is free to submit other kinds of documentation, but only *in addition to*, rather than *in place of*, the types of documentation required by the regulation. In this instance, the petitioner has not submitted any of the required types of evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Furthermore, the bank statement shows sufficient cash reserves for less than five months of remuneration at the stated rate, even assuming that the beneficiary's housing and transportation incur no additional costs. The petitioner's minimal financial documentation does not demonstrate that the petitioner's income outpaces its expenses to a sufficient extent to pay the beneficiary's wages and expenses.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.